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Principal Deputy Assistant Attorney General

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7
8 ADAM L. BRAVERMAN
United States Attorney
9 Southern District of California

10 *Attorneys for the United States of America*

11
12 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

13
14 UNITED STATES OF AMERICA,

15 Plaintiff,

16 v.

17 RALPH M. AMATO and
18 DIANA T. AMATO,

19 Defendants.
20 _____

)
) Case No. **'18CV2803 BAS KSC**

)
) **UNITED STATES'**
) **COMPLAINT TO REDUCE**
) **FEDERAL TAX ASSESSMENTS**
) **TO JUDGMENT**

21 The United States of America ("United States"), by and through undersigned
22 counsel, complains and alleges as follows:
23

1 **NATURE OF THE ACTION**

2 1. This is a civil action timely brought by the United States to reduce to
3 judgment certain outstanding federal tax assessments against Defendants Ralph M.
4 Amato and Diana T. Amato (collectively “Taxpayers”).

5 **JURISDICTION AND VENUE**

6 2. This action is commenced pursuant to 26 U.S.C. §§ 7401 and 7402 at
7 the direction of a delegate of the Attorney General of the United States and with
8 the authorization and request of the Chief Counsel of the Internal Revenue Service
9 (“IRS”), a delegate of the Secretary of the Treasury of the United States.
10

11 3. The Court has jurisdiction over this action pursuant to 28 U.S.C. §§
12 1340 and 1345, and 26 U.S.C. § 7402.
13

14 4. Venue properly lies in this judicial district pursuant to 28 U.S.C. §§
15 1391(b) and 1396, because it is the district where the liability for the taxes at issue
16 accrued and it is the district in which the Taxpayers reside.

17 **THE DEFENDANTS**

18 5. The Taxpayers are named defendants because the IRS assessed the
19 federal tax liabilities at issue against them.
20
21
22
23

COUNT ONE:**REDUCE TO JUDGMENT FEDERAL TAX
ASSESSMENTS AGAINST THE TAXPAYERS**

6. The United States incorporates by reference paragraphs 1 through 5, above, as if fully set forth here.

7. On various dates, a delegate of the Secretary of the Treasury made timely assessments against the Taxpayers for unpaid joint federal income taxes (Form 1040 taxes) as follows:

TAX TYPE	TAX YEAR	DATE OF ASSESSMENT	ASSESSED AMOUNT	OUTSTANDING BALANCE* AS OF 12/11/2018
1040	12-31-1999	3-19-2001 2-12-2009 8-10-2009 12-28-2009 10-3-2011 2-18-2013 11-10-2014 11-16-2015 11-14-2016 9-25-2017 1-8-2018 7-16-2018	(1) \$ 5,154.00 (2) \$721,192.00 (3) \$144,245.56 (5) \$144,238.40 (6) \$760,403.64 (4) \$ 39,659.18 (7) \$ 21.00 (4) \$138,537.04 (7) \$ 68.00 (6) \$406,028.23 (6) \$ 72,304.27 (6) \$ 88,410.60 (7) \$ 134.00 (7) \$ 20.00 (7) \$ 76.00	\$ 2,722,091.86
1040	12-31-2000	7-9-2001 3-9-2009 8-10-2009 10-3-2011	(1) \$ 2,981.00 (2) \$ 29,885.00 (5) \$ 5,977.00 (6) \$ 9,247.49 (4) \$ 1,344.82 (4) \$ 6,126.42	

		11-10-2014	(6) \$ 10,513.21	
		11-16-2015	(6) \$ 1,953.49	
		11-14-2016	(6) \$ 2,389.36	
				\$ 73,782.13
1040	12-31-2001	8-5-2002	(1) \$ 10,472.00	
		3-9-2009	(2) \$ 1,925.00	
			(6) \$ 403.06	
		8-10-2009	(4) \$ 86.62	
		10-3-2011	(4) \$ 394.62	
		11-10-2014	(6) \$ 553.56	
		11-16-2015	(6) \$ 104.11	
		11-14-2016	(6) \$ 127.35	
				\$ 3,932.52

- (1) Assessed Tax based on Originally Filed Return.
(2) Assessed Additional Tax after Examination and Tax Court Decision.
(3) Late Filing Penalty pursuant to 26 U.S.C. § 6651(a)(1).
(4) Failure to Pay Penalty pursuant to 26 U.S.C. § 6651(a)(2).
(5) Accuracy-Related Penalty pursuant to 26 U.S.C. § 6662.
(6) Assessed Interest.
(7) Fees and Collection Costs.

* Including accrued but unassessed interest and statutory additions through December 11, 2018.

8. The IRS issued a notice of deficiency to the Taxpayers on January 17, 2007, setting forth deficiencies of income tax for the 1999 and 2000 tax years as well as penalties. Subsequently, the IRS issued a separate notice of deficiency to the Taxpayers on March 21, 2007, setting forth a deficiency of income tax for the 2001 tax year.

9. The Taxpayers filed a petition for review of the IRS's Notices of Deficiency for the 1999, 2000, and 2001 tax years with the United States Tax Court on or about April 23, 2007, in *Amato v. Commissioner*, Docket No. 9041-07,

1 United States Tax Court. Pursuant to the agreement of the parties, on November
2 24, 2008, the Tax Court issued a Decision determining that the Taxpayers owed
3 deficiencies in income tax for each of the 1999, 2000, and 2001 tax years, a
4 separate addition to tax for the 1999 tax year, and penalties for the 1999 and 2000
5 tax years. The Tax Court Decision also provided that interest would be assessed as
6 provided by law.
7

8 10. The assessments described in paragraph 7, above, for the 1999, 2000,
9 and 2001 tax years are based on the November 24, 2008 United States Tax Court
10 decision in *Amato v. Commissioner*.
11

12 11. Notice and demand for payment of the assessments described in
13 paragraph 7, above, was provided to and made upon the Taxpayers.
14

15 12. Despite notice and demand for payment, the Taxpayers neglected,
16 failed and/or refused to fully pay the amounts set forth in paragraph 7, above.
17

18 13. There is due and owing from the Taxpayers on the assessments
19 described in paragraph 7, above, the sum of \$2,799,806.51, plus statutory interest
20 and other additions running from December 11, 2018, as provided by law, which
21 takes into account payments and credits made towards these assessments.

22 **WHEREFORE**, the United States respectfully requests the following relief:

23 A. That this Court enter judgment in favor of the United States and
against the Taxpayers, jointly and severally, for \$2,799,806.51, plus statutory

1 interest and other additions running from December 11, 2018, as provided by law;
2 and

3 B. That the United States be awarded its costs and such other relief as is
4 just and proper.
5

6
7 Respectfully submitted this 13th day of December, 2018.

8 RICHARD E. ZUCKERMAN
9 Principal Deputy Assistant Attorney General

10 /s/ Jeremy N. Hendon
11 JEREMY N. HENDON
12 Trial Attorney, Tax Division
13 U.S. Department of Justice
14 P.O. Box 683
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16 ADAM L. BRAVERMAN
17 United States Attorney
18 Southern District of California
19 *Of Counsel*

20 *Attorneys for the United States*
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23

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

UNITED STATES OF AMERICA

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Jeremy N. Hendon, U.S. Department of Justice, Tax Division
P.O. Box 683, Ben Franklin Station, Washington, DC 20044
(202) 353-2466

DEFENDANTS

RALPH M. AMATO and DIANA T. AMATO

County of Residence of First Listed Defendant San Diego
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

'18CV2803 BAS KSC**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input checked="" type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from Another District (specify)
☐ 6 Multidistrict Litigation - Transfer
☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

26 U.S.C. Sections 7401 and 7402

Brief description of cause:

Reduce federal tax assessments to judgment.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

2,799,806.51

CHECK YES only if demanded in complaint:

JURY DEMAND:

☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

12/13/2018

SIGNATURE OF ATTORNEY OF RECORD

/s/ Jeremy N. Hendon

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.